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No. 27

In the Supreme Court of the United States

OCTOBER TERM, 1952

UNITED STATES OF AMERICA, PETITIONER

v.

IDA D. CARDIFF

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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Respondent contends (Br. 16–19) that the Food, Drug and Cosmetic Act, if construed to render punishable a refusal to permit inspection in the circumstances here disclosed, would violate the Fourth and Fifth Amendments. Respondent's constitutional argument, if valid, would appear to extend equally to the statute as construed by the court below, or indeed to any construction, however limited, under which refusal to permit inspection could be made an offense. The district court rejected this constitutional contention (R. 10–11); the court of appeals did not reach it. We believe it is clearly without merit.

The proposed inspection clearly violated no constitutional right of respondent. The proposed

inspection was not of respondent's house, property or private papers, but of a factory and its contents, owned by a corporation of which respondent is president. A corporate officer has no privilege to refuse to produce corporate papers in his custody on the ground that they may incriminate him. *Hale* v. *Henkel,* 201 U. S. 43, 74–76; *Wilson* v. *United States,* 221 U. S. 361; *United States* v. *White,* 322 U. S. 694. For like reasons he cannot refuse to permit inspection of corporate property in his custody on the ground that it may incriminate him. Nor does ~~petitioner~~ respondent have any right of privacy which could be invaded by inspection of the corporate property. Cf. *Goldstein* v. *United States,* 316 U. S. 114, 121; *Agnello* v. *United States,* 269 U. S. 20, 35.[1]

[1] Here, unlike *United States* v. *Jeffers,* 342 U. S. 48, 52, there was no purpose to "locate and seize [property] of respondent." Respondent's objection here is to an inspection of the property of someone else. That inspection, should it disclose evidence of violation of the law, might lead merely to informal methods of preventing recurrence, or it might result in a seizure of the *corporate* property by libel, or possibly to a seizure of *corporate* property as evidence for criminal proceedings against the corporation or respondent as its officer. In the event that evidence obtained through the inspection is sought to be used in criminal proceedings against respondent, respondent could of course move to suppress such evidence. For reasons set forth later in this Reply Brief, we believe such a motion would fail. But, in any event, any objection to inspection of the *corporate* property based on possible use of its fruits in a future prosecution of ~~petitioner~~ respondent is premature.

Nor did the proposed inspection infringe any right of the corporation which respondent was entitled to vindicate. Comparable powers of entry and inspection have been repeatedly conferred and exercised. Thus 26 U. S. C. 3601 (formerly Rev. Stat. 3177),[2] authorizes revenue officials to enter and inspect any building or place where articles or objects subject to taxation are made, produced or kept, so far as it may be necessary for the purpose of examining such articles, and imposes sanctions for refusal to permit entry and examination, and for forcible obstruction or hindrance to the officer. This Court has assumed the validity of those provisions (*United States* v. *Mann*, 95 U. S. 580; *United States* v. *Barnes*, 222 U. S. 513), and lower courts have held that entry and seizure of taxable articles, pursuant to these provisions, did not violate the Fourth Amendment. *Carvalho* v. *United States*, 54 F. 2d 232 (C. A. 1) (distillery); *Hilsinger* v. *United States*, 2 F. 2d 241 (C. A. 6), certiorari denied, 266 U. S. 622 (brewery).[3]

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[2] By error Rev. Stat. 3152 is referred to on page 40 of our Main Brief in lieu of Rev. Stat. 3177. Although 26 U. S. C. 3601 is said, in the annotation at 26 U. S. C. p. 3000, to have been derived from Rev. Stat. 3152 and Rev. Stat. 3177, it is the latter section that contained the provisions relating to entry and inspection to which we intended to refer.

[3] See also *United States* v. *Frisch*, 140 F. 2d 660, 662 (C. A. 5); *In re Sana Laboratories*, 115 F. 2d 717 (C. A. 3), certiorari denied, 312 U. S. 688.

Even more directly analogous are the provisions of the Meat Inspection Act, 1906, 34 Stat. 674, 1260, 21 U. S. C. 71–95. That Act authorizes federal inspectors to enter, at any time of day or night, establishments processing meat products in order to examine the meat products and the sanitary condition of the plant (21 U. S. C. 74, 76) and prohibits the transportation in interstate commerce of products not inspected and approved (21 U. S. C. 78, 87).[4] This Court has held that the enactment of such provisions "was within the power of Congress in order to prevent interstate and foreign shipment of impure or adulterated meat-food products." *Pittsburgh Melting Co.* v. *Totten*, 248 U. S. 1, 8.[5] Analogous provisions are contained in a number of other federal statutes.[6] Like inspection provisions abound in

[4] Under the present Act, inspection is authorized, and refusal to permit it is an offence, only if the products manufactured, stored or handled are to be or have been introduced into interstate commerce (Sec. 704). Thus, as under the Meat Inspection Act, the duty to permit inspection can be avoided by ceasing to do interstate business.

[5] See also *United States* v. *Lewis*, 235 U. S. 282; *Cudahy Packing Co.* v. *McBride*, 92 F. 2d 737, 739–740 (C. A. 8), certiorari denied, 303 U. S. 639; *United States* v. *Cudahy Packing Co.*, 243 Fed. 441 (D. Conn.).

[6] See 21 U. S. C. 94a (inspection of dairy products); 21 U. S. C. 143 (inspection of milk and cream); 21 U. S. C. 156–158 (inspection of establishments making viruses, serums, toxins, etc.); 21 U. S. C. 344 (c) (inspection of permit-holding establishments); 26 U. S. C. 2325–7 (inspection of factories making renovated butter—see *Cloverleaf Co.* v. *Patterson*, 315 U. S. 148, 168, 171); 26 U. S. C. 2826–2830 (inspection of distilleries).

state laws and municipal ordinances.[1] Indeed the power to enact inspection laws has long been regarded as one of the most fundamental powers of government. See *e. g., Gibbons* v. *Ogden,* 9 Wheat. 1, 202; *Slaughter-House Cases,* 16 Wall. 36, 63.

Such provisions, at least as applied to business enterprises, are a valid exercise of the visitatorial powers of government. This Court has long recognized that corporations engaged in interstate commerce

> can claim no equality with individuals in the enjoyment of a right to privacy. *Cf. United States* v. *White, supra.* They are

[1] See *e. g.*, the Chicago, Illinois, ordinance empowering health inspectors to enter any premises other than a private dwelling where food is stored or kept and seize and destroy any putrid, decayed, poisoned and infected food which they may find in such premises, considered in *North American Storage Co.* v. *Chicago*, 211 U. S. 306; the provisions for inspection of cattle and places for their care, referred to in *Adams* v. *Milwaukee*, 228 U. S. 572, 580–581; the provisions for sampling and analysis of commercial feeds sustained in *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540; the quarantine act authorizing, *inter alia*, inspectors to "enter upon any grounds or premises to carry out the provisions of this act," sustained in *Smith* v. *St. Louis and Southwestern Ry. Co.*, 181 U. S. 248; the provisions for inspection of livestock (Sec. 6) of the ordinance sustained in *Slaughter-House Cases*, 16 Wall. 36; and the provisions authorizing forcible entry into private premises by state officers to test cattle for tuberculin, sustained in *Dederick* v. *Smith*, 88 N. H. 63, 184 A. 595, appeal dismissed for want of a substantial federal question, 299 U. S. 506. For state cases involving the power to inspect places of business dealing with drugs or foods, see 22 Am. Jur. pp. 822, 858–864; 47 Am. Jur. pp. 508–510.

and records, and inspection of sanitary conditions in a factory or warehouse. It would be highly anomalous to hold that the power to inspect a factory for sanitary conditions dangerous to health was less extensive than the power to inspect corporate books for violations of economic regulations.[8]

For these reasons, the only courts that have considered the question have sustained the inspection provisions of the Food, Drug and Cosmetic Act against attack under the Fourth and Fifth Amendments. See decision of the district court below (R. 10–11) and *United States* v. *Crescent-Kelvan Co.*, 164 F. 2d 582 (C. A. 3). To hold otherwise would seriously weaken an Act vitally necessary for the protection of the national health. As our main brief indicates, factory inspection under the Act, as under the Meat Inspection Act and like legislation, is not primarily a search for evidence to be used in criminal proceedings. It is rather a regulatory device which serves in part to advise the factory owner of conditions of which he was ignorant and to educate him as to proper methods and standards of sanitation, and which may result in warn-

[8] For the reasons given above, the right to inspect a factory, owned by a corporation engaged in processing articles of food for interstate commerce, stands on a very different footing from the right to enter a private home, on which this Court reserved decision in *District of Columbia* v. *Little*, 339 U. S. 1.

ings, voluntary action by the owner, and injunction or libel procedings as well as criminal proceedings. It is, moreover, not only the most effective, but in many instances the only possible means of effectuating the aspect of the Act which those charged with its enforcement consider their most important problem—the maintenance, by preventive as well as punitive means, of adequate sanitary conditions in establishments handling foods, drugs and cosmetics. As addressed to such a situation, the relatively mild power of compulsory inspection of factories which the Act authorizes cannot be said to be unreasonable or to violate the Fourth and Fifth Amendments.

Respectfully submitted.

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